

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, Foley Square, in the City of New York, on the 9th day of August, two thousand and six.

PRESENT:

HON. DENNIS JACOBS,
HON. BARRINGTON D. PARKER,
HON. PETER W. HALL,
Circuit Judges.

Klidi Pjalmi, Migena Pjalmi, _____
_____*Petitioners,*

-v.-

No. 05-0018-ag
NAC

Alberto R. Gonzales¹, Attorney General of the United States,
Respondent.

FOR PETITIONERS: Charles Christophe, New York, New York.

FOR RESPONDENT: Matthew D. Orwig, United States Attorney for the Eastern District of Texas, Traci L. Kenner, Assistant United States Attorney, Tyler, Texas.

¹Pursuant to Federal Rule of Appellate Procedure 43(c)(2), Attorney General Alberto R. Gonzales is automatically substituted for former Attorney General John Ashcroft.

1 UPON DUE CONSIDERATION of this petition for review of a decision of the Board of
2 Immigration Appeals (“BIA”), it is hereby ORDERED, ADJUDGED, AND DECREED that the
3 petition for review is GRANTED, the BIA’s decision is VACATED and the case is
4 REMANDED for further proceedings consistent with this decision.

5 Klidi and Migena Pjalmi petition for review of the BIA’s December 2004 decision in
6 which the BIA affirmed Immigration Judge (“IJ”) Douglas B. Schoppert’s order denying the
7 petitioners’ applications for asylum, withholding of removal, and relief pursuant to the
8 Convention Against Torture (“CAT”), and ordering them removed. We presume the parties’
9 familiarity with the underlying facts, the procedural history, and the scope of the issues presented
10 on appeal.

11 One of the first questions that must be addressed in a petition for review of an order of
12 removal is what the Court is reviewing, whether it be the BIA decision, the IJ decision, or some
13 combination of the two. This question ultimately comes down to an interpretation of what
14 reasoning the BIA intended to rest its decision on. For example, if the BIA summarily affirms
15 the decision of the IJ without issuing an opinion, *see* 8 C.F.R. § 1003.1(e)(4), this Court reviews
16 the IJ’s decision as the final agency determination. *See, e.g., Twum v. INS*, 411 F.3d 54, 58 (2d
17 Cir. 2005); *Yu Sheng Zhang v. U.S. Dep’t of Justice*, 362 F.3d 155, 158 (2d Cir. 2004). Or, if the
18 BIA adopts the decision of the IJ and supplements the IJ’s decision, this Court reviews the
19 decision of the IJ as supplemented by the BIA. *See Yu Yin Yang v. Gonzales*, 431 F.3d 84, 85 (2d
20 Cir. 2005); *Yan Chen v. Gonzales*, 417 F.3d 268, 271 (2d Cir. 2005). Further, if the BIA affirms
21 the IJ’s decision in all respects but one, this Court reviews the IJ’s decision as modified by the
22 BIA decision, *i.e.*, “minus the single argument for denying relief that was rejected by the BIA.”
23 *Xue Hong Yang v. U.S. Dep’t of Justice*, 426 F.3d 520, 522 (2d Cir. 2005).

In this case, the BIA specifically adopted and affirmed the IJ's decision "insofar as he found that the applicants had not satisfied the applicable burden of proof for the requested forms of relief." The IJ's decision, however, rested on an adverse credibility finding. While adverse credibility is a factor that may likely cause a petitioner to fail to meet a burden of proof, we cannot tell from the BIA's wording whether the BIA affirmed (1) because it assumed Pjalmi to be credible but found he had not presented sufficient proof or (2) because it believed Pjalmi was not credible. If the former, the BIA ignored substantial evidence. Pjalmi testified to being stabbed, shot, detained, and burned with cigarettes. If the BIA is concluding that these events do not rise to the level of persecution, or, on the other hand, if it believes he is not credible, it needs to say what it is concluding and then provide much more explanation than the conclusory statement it has given so far. *See Ivanishvili v. U.S. Dep't of Justice*, 433 F.3d 332, 342-43 (2d Cir. 2006).

For the foregoing reason, the petition for review is GRANTED, the decision of the BIA is VACATED, and the case is REMANDED to the BIA for further proceedings in accordance with this order. Having completed our review, any stay of removal that the Court previously granted in this petition is VACATED, and any pending motion for a stay of removal in this petition is DENIED as moot. Any pending request for oral argument in this petition is DENIED in accordance with Federal Rule of Appellate Procedure 34(a)(2), and Second Circuit Local Rule 34(d)(1).

FOR THE COURT:
Roseann B. MacKechnie, Clerk

By: _____